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13 SUSAN NICHOLSON HOFHEINZ

14 **UNITED STATES DISTRICT COURT**  
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 SUSAN NICHOLSON HOFHEINZ, an  
17 Individual,

18 Plaintiff,

19 v.

20 A.V.E.L.A., INC., a Nevada Corporation;  
21 ARTNOSTALGIA.COM, INC., a  
22 Delaware Corporation; X ONE X MOVIE  
23 ARCHIVE, INC., a Delaware  
24 Corporation, LEO VALENCIA, an  
25 Individual; FUNKO, LLC, a Washington  
26 Corporation; TOYS "R" US, INC., a  
27 Delaware Corporation individually and  
28 doing business as "TOYS "R" US";  
GEOFFREY, LLC, a Delaware  
Corporation individually and doing  
business as "TOYS "R" US";  
ENTERTAINMENT EARTH, INC., a  
California Corporation; SMERALDI

Case No. 12-06546 SJO(RZx)

**PLAINTIFF'S COMPLAINT FOR:**

1. COPYRIGHT INFRINGEMENT;
2. VICARIOUS AND/OR CONTRIBUTORY COPYRIGHT INFRINGEMENT;
3. VIOLATIONS OF LANHAM ACT (15 U.S.C. 1125)
4. STATE TRADE DRESS INFRINGEMENT
5. STATE TRADEMARK INFRINGEMENT
6. STATE UNFAIR COMPETITION

Jury Trial Demanded

FILED  
12 JUL 30 PM 2:58  
CLERK OF DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
LOS ANGELES

1 ENTERPRISES, a Business Entity of  
2 Form Unknown, individually and doing  
3 business as  
4 “WWW.MYMOVIEMONSTERS.COM”;  
5 AMAZON.COM, INC., a Washington  
6 Limited Liability Company; and DOES 1-  
7 10,  
8  
9 Defendants.

10 Plaintiff SUSAN NICHOLSON HOFHEINZ (hereinafter “SUSAN”), by and  
11 through her undersigned attorneys, hereby prays to this honorable Court for relief  
12 based on the following:

### 13 INTRODUCTION

14 Plaintiff SUSAN is, amongst other things, the exclusive owner of the rights in  
15 and to a group of creepy horror films from the 1950s. One of these films is  
16 INVASION OF THE SAUCER-MEN (hereinafter “Film”), a cult classic that  
17 revolves around a fatal (or is it?) accident in which an alien falls prey to the fender of  
18 an automobile piloted by a pair of amorous teenagers. A beer-drinking bull, an  
19 eccentric farmer, and a detached, yet animated, limb all contribute to the unique  
20 appeal of this film; but, one of the – if not the – most important elements of the film  
21 are the titular Saucer-Men themselves. Indeed, filmgoers young and old have thrilled  
22 to and been kept up at night by the specter of the diabolical Saucer-Men and their  
23 extravagant weaponry, and the stylized and frightening appearance of the Saucer-  
24 Men is wildly unique, providing many hair-raising and spooktacular moments  
25 throughout the film.

26 Defendant A.V.E.L.A., Inc. (along with its affiliated entities) is a serial litigant,  
27 alleged to have ripped off numerous entertainment properties, that also markets and  
28

1 sells novelty items and other merchandise. In the case at bar it has marketed,  
2 distributed, and sold merchandise that exploits without authorization content from  
3 and related to the Film, including without limitation novelty items that depict the  
4 Saucer-Men. This action is brought to remedy this out-of-this-world misconduct.

5 **JURISDICTION AND VENUE**

6 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., § 101  
7 *et seq.* and the Lanham Act.

8 2. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and  
9 1338 (a) and (b), and ancillary jurisdiction, to the extent necessary, over the  
10 remaining claims.

11 3. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and  
12 1400(a) in that this is the judicial district in which a substantial part of the acts and  
13 omissions giving rise to the claims occurred.

14 **PARTIES**

15 4. Plaintiff SUSAN is an individual residing in Southern California.

16 5. Plaintiff is informed and believes and thereon alleges that Defendant  
17 AVELA is a corporation organized and existing under the laws of the Nevada and is  
18 doing business in and with the State of California.

19 6. Plaintiff is informed and believes and thereon alleges that Defendant  
20 ArtNostalgia.com, Inc. is a corporation organized and existing under the laws of the  
21 Nevada and is doing business in and with the State of California.

22 7. Plaintiff is informed and believes and thereon alleges that Defendant X One  
23 X Movie Archive, Inc. is a corporation organized and existing under the laws of the  
24 Nevada and is doing business in and with the State of California.

25 8. Plaintiff is informed and believes that ArtNostalgia.com, Inc., X One X  
26 Movie Archive, Inc. and A.V.E.L.A., Inc. share common ownership and/or interest,  
27 are alter egos, affiliates, and/or relations of one another, and conspired to engage in  
28

1 the conduct discussed herein. They will be referred to collectively as "AVELA" in  
2 these papers.

3 9. Plaintiff is informed and believes and thereon alleges that Defendant Leo  
4 Valencia ("Valencia") is an individual doing business in and with the State of  
5 California.

6 10. Plaintiff is informed and believes and thereon alleges that Defendant  
7 FUNKO, LLC ("FUNKO") is a Washington Corporation doing business in and with  
8 the State of California.

9 11. Plaintiff is informed and believes and thereon alleges that Defendant  
10 TOYS "R" US, INC. is a Delaware Corporation doing business individually and as  
11 "TOYS "R" US," and that GEOFFREY, LLC, is a Delaware Corporation doing  
12 business individually and as "TOYS "R" US," in and with the State of California  
13 (collectively "TOYRS "R" US").

14 12. Plaintiff is informed and believes and thereon alleges that Defendant  
15 ENTERTAINMENT EARTH, INC. ("EEI") is a California Corporation doing  
16 business in and with the State of California.

17 13. Plaintiff is informed and believes and thereon alleges that Defendant  
18 SMERALDI ENTERPRISES is a business entity of form unknown, and is doing  
19 business individually and as WWW.MYMOVIEMONSTERS.COM, (collectively  
20 "SMERALDI") in and with the State of California.

21 14. Plaintiff is informed and believes and thereon alleges that Defendant  
22 AMAZON.COM, INC. ("AMAZON") is a Washington Limited Liability Company  
23 doing business in and with the State of California.

24 15. Plaintiff is informed and believes and thereon alleges that Defendant DOES  
25 1-10, inclusive, is a manufacturer, and/or a vendor (and/or agent or employee to a  
26 manufacturer or vendor) of product to Defendant, which DOE Defendants have  
27 manufactured and/or supplied and are manufacturing and/or supplying materials and  
28

1 other product exploiting the Film without Plaintiff's knowledge or consent or have  
2 contributed to said infringement. The true names, whether corporate, individual or  
3 otherwise of Defendants DOES 1-10, inclusive, are presently unknown to Plaintiff,  
4 which therefore sues said Defendants by such fictitious names and will seek leave to  
5 amend this complaint to show their true names and capacities when same have been  
6 ascertained.

7 16. Defendants DOES 6 through 10, inclusive, are other parties not yet  
8 identified who have infringed Plaintiff's rights, have contributed to the infringement  
9 of Plaintiff's rights, or have engaged in one or more of the wrongful practices  
10 alleged herein. The true names, whether corporate, individual or otherwise, of  
11 Defendants 1 through 10, inclusive, are presently unknown to Plaintiff, which  
12 therefore sues said Defendants by such fictitious names, and will seek leave to  
13 amend this Complaint to show their true names and capacities when same have been  
14 ascertained.

15 17. Plaintiff is informed and believes and thereon alleges that at all times  
16 relevant hereto each of the Defendants was the agent, affiliate, officer, director,  
17 manager, principal, alter-ego, and/or employee of the remaining Defendants and was  
18 at all times acting within the scope of such agency, affiliation, alter-ego relationship  
19 and/or employment; and actively participated in or subsequently ratified and  
20 adopted, or both, each and all of the acts or conduct alleged, with full knowledge of  
21 all the facts and circumstances, including, but not limited to, full knowledge of each  
22 and every violation of Plaintiff's rights and the damages to Plaintiff proximately  
23 caused thereby.

24 **CLAIMS RELATED TO INVASION OF THE SAUCER-MEN**

25 18. Plaintiff is the exclusive owner and copyright holder for the Film and  
26 certain if not all of its marketing materials.  
27  
28



1           19. The Film and its marketing materials were published prior to the acts  
2 alleged herein.

3           20. Plaintiff is informed and believes that Defendants, and each of them, took  
4 access to and received the Film and its marketing materials prior to the acts alleged  
5 therein.

6           21. Plaintiff is informed and believes that Defendants, and each of them, were  
7 manufacturing or having manufactured, marketing, distributing, and selling  
8 merchandise that exploits the content and characters from the Film ("Accused  
9 Product").

10           22. Specifically, without limitation, Plaintiff is informed and believes and  
11 thereon alleges that AVELA provided a false license and/or authority to exploit the  
12 Film's material to FUNKO, and otherwise collaborated and conspired with FUNKO  
13 to create or have the Accused Product created, after which it was sold by AVELA  
14 and/or FUNKO to and through TOYS "R" US, EEI, SMERALDI, AMAZON and  
15 DOE Defendants.

16           23. The above-alleged conduct was not authorized by Plaintiff, and is in  
17 violation of Plaintiff's rights as the exclusive owner of the Film.

18           24. One exemplar of the Accused Product originating from Defendants, and  
19 each of them, is set forth below. On the left is an exemplar of the marketing material  
20 for the Film, depicting the evil and eponymous Saucer-Men (along with what  
21 appears to be a pair of flying vehicles and a damsel who is very much in distress).  
22 On the right is a "Wacky Wobbler" (viz., a bobble-head) that was marketed and sold  
23 by Defendants, and each of them:

24  
25  
26 ///

27 ///



25. The Films' marketing materials depict the Saucer-Men as they appear in the Film. A comparison of the above image makes clear that Defendants', and each of their, "Wacky Wobbler" product is substantially similar to the Saucer-Men from the Film, right down to the wicked-looking blade instrument clutched in the Saucer-Man's veiny claw. This violates Plaintiff's copyrights in the Film.

26. In addition, the Accused Product violates SUSAN's trademark and trade dress rights in its use of the name of the Film and certain material from the Film and/or its marketing on the Accused Product's packaging.

27. Defendants, nor any of them, ever obtained from SUSAN permission to exploit in any way the Film, its characters, or its marketing materials.

28. Plaintiff is informed and believes and thereon alleges that Valencia was personally involved in the acts of infringement alleged herein, and/or is an alter ego or proxy for the companies alleged to have committed the injurious misconduct.

29. Plaintiff contacted AVELA to provide notice of the claims alleged herein, and request a cessation of the infringing conduct, but an adequate response was not received.

**FIRST CLAIM FOR RELIEF**

(For Copyright Infringement – Against All Defendants, and Each)

30. Plaintiff repeats, re-alleges and incorporates herein by reference as though fully set forth the allegations contained in the preceding paragraphs of this Complaint.

31. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, had access to the Film, which was first released in theaters in the 1950s.

32. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, misappropriated content from the Film to create, or have created, products that are substantially similar to certain of the material encompassed in the Film.

33. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, infringed Plaintiff's copyright by creating, making and/or developing directly infringing and/or derivative works from the Film and by producing, distributing and/or selling product that infringes the Film through a nationwide network of retail stores and on-line outlets.

34. Plaintiff is further informed and believes, and thereon alleges, that Defendants, and each of them, created unlawful derivative works that were based on the Film, and sold said works in commerce.

35. The above-stated acts by Defendants, and each of them, violated Plaintiff's exclusive right to create derivative works from Film and its exclusive right to distribute and sell product related to the Film's material.

36. Due to Defendants' acts of infringement, Plaintiff has suffered general and special damages in an amount to be established at trial.

37. Due to Defendants' acts of copyright infringement as alleged herein, Defendants, and each of them, have obtained direct and indirect profits they would



1 not otherwise have realized but for their infringement of the Film. As such, Plaintiff  
 2 is entitled to disgorgement of Defendants' profits directly and indirectly attributable  
 3 to Defendants' infringement of the Film in an amount to be established at trial.

4 38. Plaintiff is informed and believes and thereon alleges that the infringement  
 5 of the content from the Film by Defendants, and each of them, was willful, with  
 6 knowledge, reckless, and/or in blatant disregard for SUSAN's rights as a copyright  
 7 holder for the Film, and as such, Defendants, and each, are liable for willful,  
 8 exemplary and enhanced statutory damages of up to and including one hundred and  
 9 fifty thousand dollars and/or a preclusion from deducting certain costs relevant to  
 10 disgorgeable profits.

### 11 **SECOND CLAIM FOR RELIEF**

12 (For Vicarious and/or Contributory Copyright Infringement – Against All  
 13 Defendants, and Each)

14 39. Plaintiff repeats, realleges and incorporates herein by reference as though  
 15 fully set forth the allegations contained in the preceding paragraphs of this  
 16 Complaint.

17 40. Plaintiff is informed and believes and thereon alleges that Defendants  
 18 knowingly induced, participated in, aided and abetted in and profited from the illegal  
 19 reproduction and/or subsequent sales of the Accused Product as alleged hereinabove.

20 41. Plaintiff is informed and believes and thereon alleges that Defendants, and  
 21 each of them, are vicariously liable for the infringement alleged herein because they  
 22 had the right and ability to supervise the infringing conduct and because they had a  
 23 direct financial interest in the infringing conduct.

24 42. By reason of the Defendants', and each of their, acts of contributory and  
 25 vicarious infringement as alleged above, Plaintiff has suffered and will continue to  
 26 suffer substantial damages to its business in an amount to be established at trial, as  
 27  
 28

1 well as additional general and special damages in an amount to be established at  
2 trial.

3 43. Due to Defendants' acts of copyright infringement as alleged herein,  
4 Defendants, and each of them, have obtained direct and indirect profits they would  
5 not otherwise have realized but for their infringement of the Film. As such, Plaintiff  
6 is entitled to disgorgement of Defendants' profits directly and indirectly attributable  
7 to Defendants' infringement of the Film, in an amount to be established at trial.

8 44. Plaintiff is informed and believes and thereon alleges that the infringement  
9 of the content from the Film by Defendants, and each of them, was willful, with  
10 knowledge, reckless, and/or in blatant disregard for SUSAN's rights as a copyright  
11 holder for the Film, and as such, Defendants, and each, are liable for willful,  
12 exemplary and enhanced statutory damages of up to and including one hundred and  
13 fifty thousand dollars and/or a preclusion from deducting certain costs relevant to  
14 disgorgeable profits.

### 15 **THIRD CLAIM FOR RELIEF**

16 **(Violations of Lanham Act (15 USC § 1125) – Against all Defendants, and**  
17 **Each)**

18 45. Plaintiff repeats, realleges and incorporates herein by reference as though  
19 fully set forth the allegations contained in the preceding paragraphs of this  
20 Complaint.

21 46. Plaintiff is informed and believes and thereon alleges that Defendants, and  
22 each of them, are passing off the Accused Product under the name INVASION OF  
23 THE SAUCER-MEN, and in packaging similar to and evoking that used in the Film  
24 and its marketing materials, in interstate commerce.

25 47. Plaintiff is informed and believes and thereon alleges that the passing off  
26 by Defendants, and each of them, of Accused Product under the name INVASION  
27 OF THE SAUCER-MEN causes consumer confusion as to the source of the Accused  
28

1 Product and falsely implies a sponsorship or association between the Film and the  
2 Accused Product and/or the Defendants, and each of them.

3 48. Plaintiff is informed and believes and thereon alleges that the passing off  
4 by Defendants, and each of them, of Accused Product under the name INVASION  
5 OF THE SAUCER-MEN misrepresent the nature, characteristics, and qualities of  
6 the Accused Product, as the Accused Product is not authorized product, and the  
7 packaging of the Accused Product is confusingly similar to the content in the Film  
8 and its marketing materials.

9 49. The above misstatements and deceptions by Defendants, and each of them,  
10 were material, and resulted in harm and damages to Plaintiff in an amount to be  
11 established at trial.

12 50. Plaintiff has no adequate remedy at law and is entitled to injunctive relief  
13 pursuant to 15 U.S.C. § 1116(d).

14 51. Plaintiff is entitled to recover its actual damages and Defendants' profits  
15 pursuant to 15 U.S.C. § 1117(a); treble damages pursuant to 15 U.S.C. § 1117(a) and  
16 (b); attorneys' fees and costs pursuant to 15 U.S.C. § 1117(a); seizure of all  
17 infringing goods pursuant to 15 U.S.C. § 1116(d); and impoundment and destruction  
18 of all infringing goods pursuant to 15 U.S.C. § 1118.

19 **FOURTH CLAIM FOR RELIEF**

20 **(Trade Dress Infringement in Violation of California Business and**  
21 **Professions Code Section 14245 – Against All Defendants, and Each)**

22 52. Plaintiff repeats, realleges and incorporates herein by reference as though  
23 fully set forth the allegations contained in the preceding paragraphs, inclusive, of this  
24 Complaint.

25 53. Defendants' unauthorized use of material from the Film and its marketing  
26 materials in connection with the sale, offering for sale, distribution or advertising of  
27 its products is likely to cause confusion or mistake or to deceive as to the source or  
28

1 origin of its products in violation of California Business and Professions Code  
2 Section 14245.

3 54. On information and belief, Defendants', and each of their, infringement has  
4 been with knowledge of Plaintiff's rights.

5 55. Plaintiff has been, is now, and will be irreparably injured and damaged by  
6 Defendants' aforementioned acts, and unless enjoined by the Court, Plaintiff will  
7 suffer further harm to its name, reputation and goodwill.

8 **FIFTH CAUSE OF ACTION**

9 **(Trademark Infringement under Cal. Bus. & Prof. Code § 17200 and California**  
10 **Common Law against all Defendants)**

11 56. Plaintiff repeats, re-alleges and incorporates herein by reference as though  
12 fully set forth the allegations contained in the preceding paragraphs of this  
13 Complaint.

14 57. Defendants', and each of their, use of the Film's name, without Plaintiffs'  
15 consent, constitutes trademark infringement and unfair competition in violation of  
16 California common law, in that, among other things, such use is likely to cause  
17 confusion, deception and mistake among the consuming public and trade as to the  
18 source, approval or sponsorship of the products offered by Defendants.

19 58. The acts of Defendants complained of herein constitute trademark  
20 infringement and unfair competition in violation of the statutory law of the State of  
21 California, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, in that, among other things,  
22 such use is likely to cause confusion, deception and mistake among the consuming  
23 public and trade as to the source, approval or sponsorship of the products offered by  
24 Defendants. Plaintiff is informed and believes that unless said conduct is enjoined by  
25 this Court, Defendants will continue and expand those activities to the continued and  
26 irreparable injury of Plaintiff. This injury includes a reduction in the distinctiveness  
27 of Plaintiff's trademark and trade dress, and injury to Plaintiff's reputation that

1 cannot be remedied through damages, and Plaintiff has no adequate remedy at law.  
2 Plaintiff is entitled to preliminary and permanent injunctions restraining and  
3 enjoining Defendants and its agents, servants, employees, and all persons acting  
4 thereunder, in concert with, or on their behalf, from using in commerce material  
5 from the Film or its marketing materials.

6 59. As a direct and proximate result of Defendants' willful and intentional  
7 actions, Plaintiff has suffered damages in an amount to be determined at trial and,  
8 unless Defendants are restrained, Plaintiff will continue to suffer irreparable damage.

9 **SIXTH CAUSE OF ACTION**

10 **(California Unfair Competition under Cal. Bus. & Prof. Code § 17200 and**  
11 **California Common Law against All Defendants)**

12 60. Plaintiff repeats, re-alleges and incorporates herein by reference as though  
13 fully set forth the allegations contained in the preceding paragraphs of this  
14 Complaint.

15 61. By the actions alleged above, Defendants have engaged in false designation  
16 of origin and unfair competition in violation of the statutory law of the State of  
17 California, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by entering products into the  
18 stream of commerce, which deceived and confused members of the public as to the  
19 origin of their goods. Plaintiff is informed and believes that unless said conduct is  
20 enjoined by this Court, Defendants will continue and expand those activities to the  
21 continued and irreparable injury of Plaintiff. This injury includes a reduction in the  
22 distinctiveness of the Film and injury to Plaintiff's reputation that cannot be  
23 remedied through damages, and Plaintiff has no adequate remedy at law. Plaintiff is  
24 entitled to preliminary and permanent injunctions restraining and enjoining  
25 Defendants and its agents, servants, employees, and all persons acting thereunder, in  
26 concert with, or on their behalf, from using in commerce content from the Film.  
27



62. As a direct and proximate result of Defendants' willful and intentional actions, Plaintiff has suffered damages in an amount to be determined at trial and, unless Defendants are restrained, Plaintiff will continue to suffer irreparable damage.

### **PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for relief and judgment as follows:

#### **Against All Defendants**

#### **1. With Respect to Each Claim for Relief**

- a. That Plaintiff be awarded all profits of Defendant plus all losses of Plaintiff, the exact sum to be proven at the time of trial, or, if elected before final judgment, statutory damages as available under 17 U.S.C. § 101, *et seq.*;
- b. A disgorgement of profits and other damages arising from such infringement, pursuant to 15 U.S.C. § 1117, and award all damages called for therein;
- c. An award of actual damages sustained by Plaintiff;
- d. That Plaintiff be awarded its attorneys' fees as available under 17 U.S.C. § 101, *et seq.*, 17 U.S.C. § 1202, and 15 U.S.C. § 1117;
- e. An injunction against continued infringement of Plaintiff's trade dress and trademark, pursuant to 15 U.S.C. § 1116, and the unfair competition provisions;
- f. An injunction against continued infringement of Plaintiff's trade dress and trademark, pursuant to Cal Bus & Prof Code § 14245;
- g. An order directing Defendants to file with the court and serve on Plaintiff a report setting forth an accounting and the manner and form in which Defendants have complied with the injunction, pursuant to 15 U.S.C. § 1116;

- 1 h. That Plaintiff be awarded pre-judgment interest as allowed by law;
- 2 i. That Plaintiff be awarded the costs of this action;
- 3 j. That Plaintiff be awarded treble damages and/or punitive damages in an
- 4 amount sufficient to deter and punish Defendant, on account of
- 5 Defendant's willful violation of Federal, California, and common law;
- 6 and declaring this case to be an exceptional case within the meaning of
- 7 15 U.S.C. § 1117;
- 8 k. That Plaintiff be awarded such further legal and equitable relief as the
- 9 Court deems proper;
- 10 l. That an imposition of a constructive trust be entered over all products
- 11 and materials bearing, in whole or in part, any material from the Film or
- 12 its marketing materials, to the extent said products and materials were
- 13 created, purchased, sold, advertised, or distributed in violation of
- 14 Plaintiff's rights therein, as well as all registrations relating to Plaintiff's
- 15 works filed by Defendants, any of them, and any third parties, and all
- 16 profits, monies, royalties, and any other benefits derived or obtained by
- 17 Defendants, or any of them, from the wrongful ownership, use,
- 18 purchase, sale, distribution, licensing, or exploitation of Plaintiff's works
- 19 of art.

20 A TRIAL BY JURY PURSUANT TO FED. R. CIV. P. 38 AND

21 CONSTITUTIONAL AMENDMENT SEVEN IS HEREBY DEMANDED.

22 Respectfully submitted,

23 

24 Dated: July 30, 2012

By:

25 Scott A. Burroughs, Esq.  
26 DONIGER / BURROUGHS  
27 Attorneys for Plaintiff  
SUSAN NICHOLSON HOFHEINZ

Stephen M. Doniger, Esq. (SBN 179314)  
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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

SUSAN NICHOLSON HOFHEINZ, an Individual,

PLAINTIFF(S)

v.

A.V.E.L.A., INC., a Nevada Corporation; et al.,  
[SEE ATTACHED "SCHEDULE A"]

DEFENDANT(S).

CASE NUMBER

CV12-06546 SJO(RZX)

SUMMONS

TO: DEFENDANT(S): \_\_\_\_\_

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ \_\_\_\_\_ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, SCOTT A. BURROUGHS, ESQ., whose address is DONIGER / BURROUGHS APC, 300 Corporate Pointe, Ste. 355, Culver City, CA 90230. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

JUL 30 2012

Dated: \_\_\_\_\_

Clerk, U.S. District Court

JULIE PRADO

By: \_\_\_\_\_

Deputy Clerk

(Seal of the Court)

1154

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

**“SCHEDULE A”**

SUSAN NICHOLSON HOFHEINZ, an  
Individual,

Plaintiff,

v.

A.V.E.L.A., INC., a Nevada Corporation;  
ARTNOSTALGIA.COM, INC., a  
Delaware Corporation; X ONE X MOVIE  
ARCHIVE, INC., a Delaware  
Corporation, LEO VALENICA, an  
Individual; FUNKO, LLC, a Washington  
Corporation; TOYS “R” US, INC., a  
Delaware Corporation individually and  
doing business as “TOYS “R” US”;  
GEOFFREY, LLC, a Delaware  
Corporation individually and doing  
business as “TOYS “R” US”;  
ENTERTAINMENT EARTH, INC., a  
California Corporation; SMERALDI  
ENTERPRISES, a Business Entity of  
Form Unknown, individually and doing  
business as  
“WWW.MYMOVIEMONSTERS.COM”;  
AMAZON.COM, INC., a Washington  
Limited Liability Company; and DOES 1-  
10,

Defendants.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

<b>I (a) PLAINTIFFS</b> (Check box if you are representing yourself <input type="checkbox"/> ) Susan Nicholson Hofheinz	<b>DEFENDANTS</b> A.V.E.L.A., Inc.; et al.
<b>(b) Attorneys</b> (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)  Scott A. Burroughs, Esq. (SBN 235718) DONIGER / BURROUGHS APC 300 Corporate Pointe, Suite 355 Telephone: (310) 590-1820	<b>Attorneys</b> (If Known)

  

<b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.)  <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only</b> (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;">PTF <input type="checkbox"/> 1</td> <td style="width:10%;">DEF <input type="checkbox"/> 1</td> <td style="width:33%;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%;">PTF <input type="checkbox"/> 4</td> <td style="width:10%;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4														
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

  

<b>IV. ORIGIN</b> (Place an X in one box only.) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify): <input type="checkbox"/> 6 Multi-District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge
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<b>V. REQUESTED IN COMPLAINT:</b> <b>JURY DEMAND:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Check 'Yes' only if demanded in complaint.) <b>CLASS ACTION under F.R.C.P. 23:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <b>MONEY DEMANDED IN COMPLAINT: \$</b> _____
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<b>VI. CAUSE OF ACTION</b> (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) Inter alia, 17 USC 501. Infringement of rights in filmed material.
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<b>VII. NATURE OF SUIT</b> (Place an X in one box only.) <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:16.6%; vertical-align: top;"> <b>OTHER STATUTES</b>  <input type="checkbox"/> 400 State Reapportionment  <input type="checkbox"/> 410 Antitrust  <input type="checkbox"/> 430 Banks and Banking  <input type="checkbox"/> 450 Commerce/ICC Rates/etc.  <input type="checkbox"/> 460 Deportation  <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations  <input type="checkbox"/> 480 Consumer Credit  <input type="checkbox"/> 490 Cable/Sat TV  <input type="checkbox"/> 810 Selective Service  <input type="checkbox"/> 850 Securities/Commodities/Exchange  <input type="checkbox"/> 875 Customer Challenge 12 USC 3410  <input type="checkbox"/> 890 Other Statutory Actions  <input type="checkbox"/> 891 Agricultural Act  <input type="checkbox"/> 892 Economic Stabilization Act  <input type="checkbox"/> 893 Environmental Matters  <input type="checkbox"/> 894 Energy Allocation Act  <input type="checkbox"/> 895 Freedom of Info. Act  <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice  <input type="checkbox"/> 950 Constitutionality of State Statutes             </td> <td style="width:16.6%; vertical-align: top;"> <b>CONTRACT</b>  <input type="checkbox"/> 110 Insurance  <input type="checkbox"/> 120 Marine  <input type="checkbox"/> 130 Miller Act  <input type="checkbox"/> 140 Negotiable Instrument  <input type="checkbox"/> 150 Recovery of Overpayment &amp; Enforcement of Judgment  <input type="checkbox"/> 151 Medicare Act  <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)  <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits  <input type="checkbox"/> 160 Stockholders' Suits  <input type="checkbox"/> 190 Other Contract  <input type="checkbox"/> 195 Contract Product Liability  <input type="checkbox"/> 196 Franchise  <b>REAL PROPERTY</b>  <input type="checkbox"/> 210 Land Condemnation  <input type="checkbox"/> 220 Foreclosure  <input type="checkbox"/> 230 Rent Lease &amp; Ejectment  <input type="checkbox"/> 240 Torts to Land  <input type="checkbox"/> 245 Tort Product Liability  <input type="checkbox"/> 290 All Other Real Property             </td> <td style="width:16.6%; vertical-align: top;"> <b>TORTS</b>  <b>PERSONAL INJURY</b>  <input type="checkbox"/> 310 Airplane  <input type="checkbox"/> 315 Airplane Product Liability  <input type="checkbox"/> 320 Assault, Libel &amp; Slander  <input type="checkbox"/> 330 Fed. 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Relations  <input type="checkbox"/> 730 Labor/Mgmt. Reporting &amp; Disclosure Act  <input type="checkbox"/> 740 Railway Labor Act  <input type="checkbox"/> 790 Other Labor Litigation  <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act  <b>PROPERTY RIGHTS</b>  <input checked="" type="checkbox"/> 820 Copyrights  <input type="checkbox"/> 830 Patent  <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b>  <input type="checkbox"/> 861 HIA (1395ff)  <input type="checkbox"/> 862 Black Lung (923)  <input type="checkbox"/> 863 DIWC/DIWW (405(g))  <input type="checkbox"/> 864 SSID Title XVI  <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b>  <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)  <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609             </td> </tr> </table>	<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. 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CV12-06546

FOR OFFICE USE ONLY: Case Number: \_\_\_\_\_

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.



**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

**VIII(a). IDENTICAL CASES:** Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes  
If yes, list case number(s): \_\_\_\_\_

**VIII(b). RELATED CASES:** Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes  
If yes, list case number(s): \_\_\_\_\_

**Civil cases are deemed related if a previously filed case and the present case:**

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or  
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or  
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

**IX. VENUE:** (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.  
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Susan Nicholson Hofheinz - Riverside County	

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.  
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
SMERALDI ENTERPRISES, WWW.MYMOVIEMONSTERS.COM - Riverside County; LEO VALENCIA - Unknown	A.V.E.L.A., INC., ARTNOSTALGIA.COM, INC., X ONE X MOVIE ARCHIVE, INC. - Nevada; FUNKO, LLC, AMAZON.COM, INC. - Washington; TOYS "R" US, INC., GEOFFREY LLC - New Jersey

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.  
**Note: In land condemnation cases, use the location of the tract of land involved.**

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County; Riverside County	

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

**Note: In land condemnation cases, use the location of the tract of land involved**

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date 7/30/12

**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

**Key to Statistical codes relating to Social Security Cases:**

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge S. James Otero and the assigned discovery Magistrate Judge is Ralph Zarefsky.

The case number on all documents filed with the Court should read as follows:

**CV12 - 6546 SJO (RZx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

☒ **Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

☐ **Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

☐ **Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.